

IN THE SENATE OF THE UNITED STATES.

APRIL 8, 1858.—Ordered to be printed.

Mr. CLARK made the following.

REPORT.

[To accompany Bill S. No. 250.]

The Committee of Claims, to whom was referred the memorial of George M. Weston, commissioner of the State of Maine, submit the following report:

The claims presented in this case originated, in part, from certain stipulations of the treaty of the 9th of August, 1842, for the final adjustment of the boundary line between the territory of the United States and that of the British province of New Brunswick, and in part out of certain diplomatic arrangements between the two governments prior to the conclusion of the treaty. By the 4th article of the treaty, (hereafter quoted,) it was agreed by the two governments that the possession or improvement of any lot of land within the disputed territory for more than six years should be construed to give a valid title to the possessor. By virtue of this stipulation, sundry small tracts of land lying in the disputed district, to which various persons held title derived from the States of Massachusetts and Maine, and which, by the treaty, fell within the United States, thereby settling the propriety and legality of the grants made by those States, became the property of other parties by possession, thereby depriving the legal owners of their property. This subject was before the Senate during the last Congress, and it being made to appear that a considerable number of persons, each for a small amount, would be interested in its decision, it was deemed expedient to send an agent to take and receive proof upon the spot as to the validity and amount of the several claims, with instructions to examine and cross-examine witnesses, and personally to inspect the premises. An agent was accordingly sent, in obedience to a resolution of the Senate, who performed the duty assigned him, and made a report, accompanied with the testimony taken and the other information obtained, to the Committee of Claims, at the last session of Congress. The entire testimony taken may be found in Senate report, No. 323, 3d session, 34th Congress. The result of the investigation is summed up in the following statement of the agent.

Statement of the claims represented by Geo. M. Weston, esq., commissioner of Maine, growing out of the settlement of the northeastern boundary question, by the treaty of August 9, 1842, submitted to the Senate Committee of Claims by N. C. Towle, agent, under the resolution of the Senate of July 18, 1856.

SKETCH OF THE NEGOTIATIONS.

The difficulties in reference to the northeastern boundary commenced immediately after the conclusion of the treaty of 1783, and it was not until after the treaty of 1794 that the identity of the river St. Croix was determined, and the point to be regarded as the source of that river was ascertained and fixed. The next point named in the treaty was the highlands that divide the waters flowing into the Atlantic ocean from those which flow into the Gulf of St. Lawrence. The British government claimed that those "highlands" must be found south of the valley of the St. John's, a river which flows into the Bay of Fundy; while the United States claimed that the "due north line" should be extended across the St. John's and until it reached the "highlands" immediately south of the St. Lawrence river. The distance between these two ranges of highlands exceeded one hundred miles, and involved the claim to a large territory of rich and valuable country, embracing the entire valley watered by the Aroostook river, as well as a large portion of that watered by the upper St. John's and its tributaries.

The two governments finding it impracticable to make any further progress in ascertaining the boundary of the two countries, agreed, by the convention of 1827, to submit the questions in dispute to the arbitration of the king of the Netherlands, who decided that no single range of highlands conforming to the description in the treaty was to be found, but that a portion of the description in the treaty would be applicable to the highlands north of the St. John's, as claimed by the United States, and another portion to the ridge south of the St. John's, as claimed by Great Britain; and he came to the conclusion that a division of the disputed territory between the two countries was the best practicable mode of settlement. This decision, had it been accepted, would have given the valley of the Aroostook to the United States.

Possessory claims.

The fourth article of the treaty is as follows, viz:

"Art. 4. All grants of land heretofore made by either party, within the limits of the territory which by this treaty falls within the dominions of the other party, shall be held valid, ratified, and confirmed to the persons in possession under such grants, to the same extent as if such territory had by this treaty fallen within the dominions of the party by whom such grants were made; and all equitable possessory claims arising from a possession and improvement of any lot or parcel of land by the person actually in possession, or by those under whom such person claims, for more than six years

before the date of this treaty, shall in like manner be deemed valid and be confirmed and quieted by a release to the person entitled thereto, of the title to such lot or parcel of land so described as best to include the improvements made thereon; and in all other respects the two contracting parties agree to deal upon the most liberal principles of equity with the settlers actually dwelling upon the territory falling to them, respectively, which has heretofore been in dispute between them."

Upon the rejection of the award of the umpire in 1832, which had assigned the valley of the Aroostook river to the United States, the British claim to that territory was revived, and settlers from the neighboring province immediately commenced their settlements along that river, as well as in various other portions of the disputed tract. In order to carry this article into effect, so far as it applied to settlers upon the ungranted lands belonging to the States of Maine and Massachusetts, the authorities of those States, immediately after the ratification of the treaty, appointed a board of commissioners, for the purpose of locating the grants and determining the extent of the possessory claims therein provided for. All claims to lands, through grants made by the government of Great Britain, as contemplated in the first clause of the fourth article, were examined and adjudicated upon by the commissioners, and ratified and confirmed to the persons in possession by the respective States.

In 1854, by authority of a resolution of the legislature of the State of Maine, another board of commissioners was appointed, with the view of carrying into effect the remaining clauses of the said 4th article, by examining into and providing for the quieting of the possessory and equitable claims of settlers. This board met upon the ground, and after hearing the statements and taking the proofs submitted to them, they proceeded to have surveyed and set off by metes and bounds, to the persons whom they found to be entitled under the treaty, the lots to which they were adjudged to have just claims. The whole number of claims thus passed upon by the board amounted to about six hundred and fifty, and the quantity of land surveyed and set off to them amounted to 71,562 acres, being a little less than an average of 100 acres to each claimant. More than one-third of this land had been purchased from the State, or had been contracted for before the date of the treaty.

It will be observed that the treaty provides that possessory claims extending back more than six years prior to its date shall be deemed valid titles. The commissioners set off, as coming under this head, 13,275 acres, divided amongst about 150 settlers.

The board of commissioners also went into the examination of the claims of persons who claimed to be equitably entitled to lands which they had improved, and of which they were in possession at the date of the treaty, but whose possession did not extend back six years.

So far as these claims depend upon the treaty, they are based upon the last clause of the 4th article, to wit: "And in all other respects the two contracting parties agree to deal upon the most liberal principles of equity with the settlers actually dwelling upon the territory

falling to them respectively." The commissioners report about three hundred settlers of this class, claiming 31,400 acres.

A portion of these lands are located in townships, the title of which had passed from the State prior to their settlement, and, of course, a considerable time prior to the date of the treaty; and it is to this portion that the resolution of the Senate, authorizing this examination, particularly applies. These lots are principally located upon both banks of the Aroostook river, from the New Brunswick line through the townships granted many years ago to the town of Plymouth, Massachusetts, for the support of an academy, and to General Eaton, in consideration of his military services in the war with Tripoli. The settlers are mostly from the neighboring province, and made their settlements while that province claimed the jurisdiction of the country. The number of these improved and occupied lots, in the two townships, is ninety-seven, embracing, in the aggregate, about 8,434 acres. All of these lots, except about one thousand acres, are shown to have been occupied or improved more than six years before the date of the treaty; and, from proof submitted to me, and which is hereto annexed, I am satisfied that most of the lots embraced in the latter description, if not clearly shown to have been occupied and improved six years prior to the treaty, were, in fact, so occupied at that time, or very soon after, and that it would be a great hardship upon these poor settlers to make a distinction between them on so slight grounds. These settlers are all poor, and dependent for the support of themselves and their families upon the produce obtained by their own labor from their little possessions. Each family holds less, on an average, than 100 acres, and the improvements are generally of a very primitive character.

The Maine commissioners estimated, from actual observation, and from proof taken, the whole value of the property covered by these claims, in the two townships under consideration, (exclusive of the right of soil,) at about \$31,000; and from the testimony of one of the commissioners, hereto annexed, it appears that they valued the land at two dollars per acre—the value of the improvements averaging a little less than \$400 for each farm, and my observation would lead me to regard this as a very fair estimate.

It further appears, from the proof submitted to me, that the value of the improvements have not materially increased since the making of the treaty; and the reason assigned for the absence of improvements is the uncertain tenure by which they hold their lands. The State, while it has given titles to those settlers who had located upon the State lands, had failed to provide any security for them, and the proprietors under the original State grants were threatening to eject them unless their demands for payment for the land were satisfied.

Whatever the strictly legal and technical rights of the parties may be, it seems to be clear that "the most liberal principles of equity"—according to which the faith of the government is pledged to deal with these parties—requires either that their titles should be affirmed, or that some compensation should be made them for their improvements, by which they should be saved from the entire loss of all their hardly

earned possessions, and from being turned destitute from their humble homes.

The uncertainty of their present condition evidently operates greatly to discourage and perplex them, and to retard their efforts to improve their condition.

The quantity of land covered by these possessory claims is 8,434 acres, and its value is moderately estimated at \$16,862, exclusive of the improvements. If the value of these be added, the amount will be \$49,139.

The commissioners of Maine, in their report to the governor, made during the last year, says: "The title to said lands can be procured from the present owners of the fee for two dollars per acre," (page 30.) And in another part of their report they say: "The proprietors of said townships are willing to release their title to said lots for a reasonable compensation, or exchange the same for other lands belonging to the State, (page 17.)

It appears that the authorities of the State, anxious to carry out the beneficent provisions of the treaty towards these settlers in the most liberal and effective manner, caused these surveys to be made, and in all cases where the title was in the State, caused deeds to be executed by the land agent conveying the lands to the settlers. This is all the State could be expected to do, although it appears, from the above remarks of the State commissioners, that the expediency of the State's acquiring these lands from the private proprietors, in order to quiet the possession of the settlers, had been entertained.

Should the United States compensate the proprietors for these lands, they should require that good and valid titles be made to the settlers, so that they should be secured from all future proprietary claims. Nearly fifteen years have elapsed since the conclusion of the treaty. Some of the proprietary titles have changed hands by private sales, and some of the lands have been sold by the State for taxes, and purchased in by the assignees of the old proprietors, by which they have acquired a title subsequent to the treaty, under which new embarrassments to the settlers might arise, unless guarded against by the provision above referred to.

Lists of the names of persons regarded as entitled to hold their possessions by virtue of the treaty, showing the quantity of land held by each, and the value of their improvements, together with a plan of the surveys made under the direction of the Maine commissioners, are hereunto annexed; from which it will be seen that the whole extent of land covered by these claims is 8,434 acres, and the value of the improvements thereon at the date of the treaty, and not materially changed since, is \$32,277. The value of the land, exclusive of improvements, is stated by Mr. Pattee and other competent witnesses, to be \$2 per acre, and not materially changed since 1842.

It appears from the records and papers exhibited that the following named persons hold the proprietary titles to these lands, and are the claimants to indemnity for the loss of title by the operation of the treaty, to the extent stated, viz:

Laura A. Stebbins, Catharine C. Ward, Rufus Munsen, and Jame₈

A. Drew, jointly to 3,353 acres ; on which the improvements are, \$10,711.

Edmund Munroe, three quarters, and Benjamin Sewall, one quarter of 3,385 acres ; improvements, \$15,229.

James A. Drew and Rufus Mansur, in equal parts, 1,692 acres ; improvements, \$6,337.

It has been decided by the supreme court of Maine, in Little's case, (32 Maine Reports, 214,) that the treaty being the supreme law of the land, overrides all other titles, and *proprio vigore* gives title to those showing a possession in conformity to its stipulations. And this seems to be in accordance with the decisions of the Supreme Court, who held that "a treaty is the law of the land, and treated as a legislative act by the courts," (2 Peters, 314 ;) and the treaty for the acquisition of Louisiana, stipulating to protect the inhabitants of the territory in their property, was so applied, (4 Peters, 511.) And Congress, by passing the act of the last session "for the relief of John S. Little," recognizes the principle of the responsibility of the government in these cases.

List of settlers on the Eaton grant, showing the number of acres claimed by each under the 4th article of the treaty of Washington, and the value of the improvements thereon.

Names.	Acres.	Value.
John Sands and Thomas Walton	175	\$150 00
Do.....do.....	107	400 00
James Shea	86	350 00
Patrick Conly	1	150 00
Robert Richards	88	300 00
R. Shugren and J. Corkins.....	210	525 00
George F. Parks	117	350 00
Hannah Parks	135	300 00
D. O. Parks	192	450 00
John Buber	77	375 00
William Buber.....	77	375 00
Charles Butler.....	52	300 00
Nathaniel Buber	61	200 00
Jesse Partridge	54	75 00
Moses Glass	1 $\frac{1}{2}$	150 00
Patrick Somers	79	250 00
John Gallaughn	83	200 00
Elias Brown.....	69	400 00
Solomon Brown.....	72	450 00
Abel Humphrey.....	167	551 00
J. & E. Doyle	44	400 00
Samuel Work	79	550 00
L. Kelly	84	350 00
C. Gambeen.....	42	} 264 00
J. Walton.....	38	
Jonah Whiteknoct	68	300 00
James Walton	35	250 00
Thomas Kelly	142	250 00
Patrick Kelly.....	182	375 00
Elizabeth Dudy.....	260	450 00
Dennis Hale.....	176	} 1,221 00
Elisha Hale	82	
James Keegan.....	112	
Add for error. (See testimony of S. B. Pattee, commissioner).	3,247	10,711 00
	106	
	3,353	

List of settlers on the western section of Plymouth township, showing the number of acres claimed by each under the 4th article of the treaty of Washington, and the value of the improvements thereon. Edmund Monroe and Benjamin Sewell, proprietors.

Names.	Acres.	Value.
A. & J. and A. & F. Bishop	6	\$800 00
John Lovely	98	400 00
Thomas Beaulan	75	700 00
A. & F. Bishop	48	300 00
W. & J. Bishop	127	600 00
Amos Bishop	80	300 00
John Flannery	51	175 00
Patrick Flannery	70	350 00
A. Giberson's heirs	101	200 00
Charles Hammond	44	175 00
William White	64	400 00
William Day	83	400 00
James Guigey	189	600 00
Daniel Turner	115	500 00
Isaac Smith	58	500 00
James Upton	138	700 00
Samuel Sands	46	2, 064 00
Richard Jordan	33	
William Haley	74	
John Murphey	67	
William Upton	126	
Patrick Finland	121	100 00
Sands & Walton	16	
S. Work	21	
J. & E. Doyle	39	265 00
Margaret Doyle	126	500 00
Sarah McGlaughlin	199	650 00
T. Giveney and J. A. Drew	136	300 00
Edw. Guigey	251	800 00
Samuel Davenport	100	400 00
E. Watson	115	300 00
George Rogers	140	500 00
A. Clark	99	100 00
Thomas Amaden	77	450 00
Alex. Guigey	38	400 00
Samuel Farley	32	275 00
William Ward	56	275 00
John L. Higgins	75	300 00
Joseph Barnes	51	450 00
	3, 385	15, 229 00

List of settlers on the eastern section of Plymouth township, (Drew and Manson, proprietors,) showing the number of acres claimed by each under the 4th article of the treaty of Washington, and the value of improvements thereon.

Names.	Acres.	Value.
Thomas Russell.....	209	\$700 00
John Russell.....	84	600 00
Job Everett.....	52	275 00
John L. Higgins.....	38	-----
Joseph Barnes and Ward.....	55	300 00
S. & J. Barnes.....		
Patrick Flannery.....	33	30 00
Thomas Flannery.....	83	550 00
George White.....	192	700 00
George Dean.....	45	250 00
Joseph Fisher.....	216	400 00
Samuel Dean.....	139	532 00
Martin Murray.....	30	100 00
John Sterling.....	97	575 00
John McDonald.....	84	375 00
Henry Hurd.....	116	275 00
William Lundy.....	101	275 00
Michael McKinney.....	118	400 00
	1,692	6,337 00

TIMBER DEPREDACTIONS.

In 1832 the valley of the Aroostook was an unbroken wilderness. The broad intervals and the gentle slopes along that river and its tributaries were covered with a heavy growth of pine, spruce and maple forests. The lands bordering upon the St. John's had already been stripped of the more valuable timber, and the attention of the lumbermen began to be directed to the tributary streams. Immediately prior to the rejection of the award of the king of the Netherlands, the principal scene of lumbering operations in that region was on the Tobique, a considerable stream, which flows into the St. John's from the east, about six miles below the mouth of the Aroostook.

Prior to the rejection of the award in 1832, the valley of the Aroostook, which had been assigned to the jurisdiction of the United States, remained free from the operations of the lumbermen; but when that fact became known, and the British claim of jurisdiction over that region was revived, these men, being British subjects, began to turn their attention to that rich and tempting field of operations. Settlers from the neighboring province began to make their way up the Aroostook, and to occupy and improve the lands on both banks of that river. Large lumbering operations were prosecuted at the same time; and, as appears from the evidence taken, between the time of the rejection of the award of the arbiter, in 1832, and the time of the forcible

occupancy of the territory by the authorities of Maine, in 1839, most of the valuable lumber for a considerable distance on each side of the river had been taken off, and the lands in the immediate vicinity of the river, for ten or fifteen miles from its mouth, were taken possession of and improved by the squatters. All obstructions to these proceedings were precluded by an arrangement between the two governments that neither should exercise jurisdiction over the territory in dispute.

In a communication addressed to the British minister, dated July 21, 1832, the Secretary of State says :

“ Until this matter [the negotiations in reference to the disputed line] be brought to a final conclusion, the necessity of refraining on both sides from any exercise of jurisdiction, beyond the boundaries now actually possessed, must be apparent, and will, no doubt, be acquiesced in on the part of his Britannic Majesty’s provinces, as it will be by the United States.”

To this proposition the British minister responded, under date of April 14, 1833, that his “ Majesty’s government entirely concur with that of the United States in the principle of continuing to abstain, during the progress of the negotiation, from extending the exercise of jurisdiction within the disputed territory beyond the limits within which it has hitherto been usually exercised by the authorities of either party.”

This arrangement was substantially adhered to until the winter of 1839, when the authorities of Maine, becoming aroused at the extensive depredations which were being committed upon what they regarded as the valuable property of the State and its citizens, resolved to interpose the State sovereignty for the protection of its own rights and interests, regardless of the diplomatic understandings of the general government. They accordingly despatched an armed posse with instructions to arrest the lumbering depredations in the region of the Aroostook, and to assert and maintain the jurisdiction of the State over it, but not to interfere with the peaceable occupancy of actual settlers.

It appears from the testimony of D. O. Parkes, George Grantham, and M. Kean, who were on the ground at the time, and speak from personal observation, that these lands were well timbered, and that the timber was mostly cut and taken off between 1832 and 1839, during the period of suspension of jurisdiction. Their average estimate of the quantity of timber on the land at the commencement of the operations (1832) was $2\frac{1}{2}$ tons. Mr. Grantham thinks two-thirds of it was taken off between 1834 and 1839. The other witnesses state that most of it was taken during that period.

These statements and estimates are corroborated by Mr. Pattee, one of the State commissioners, and Mr. Hamlin, State land agent, and several others, whose affidavits are among the papers.

It is clear, from the whole testimony, that the quantity of timber taken during said period could not have been less than one ton per acre ; and that the price actually paid for stumpage, at the time, was not less than one dollar and sixty cents per ton. The value of timber upon the stump, in that vicinity, at this time and for several years past, is \$4 56 per ton.

The quantity of land upon which this stumpage is claimed is 23,646 acres, for which it is understood that the proprietors are willing to accept one dollar per acre as full compensation, although that rate is more than fifty per cent. below the value, as stated by the witnesses whose testimony was taken.

The fifth article of the treaty would seem to indicate that some arrangement had existed between the two governments designed for the protection of this property. It is as follows:

“ Art. 5. Whereas, in the course of the controversy respecting the disputed territory on the northeastern boundary, some moneys have been received by the authorities of her Britannic Majesty’s province of New Brunswick, with the intention of preventing depredations on the forests of the said territory, which moneys were to be carried to a fund called “the disputed territory fund,” the proceeds whereof, it was agreed, should be hereafter paid over to the parties interested, in the proportions to be determined by a final settlement of boundaries, it is hereby agreed that a correct account of all the receipts and payments on the said fund shall be delivered to the government of the United States,” &c., to be paid over to the States of Maine and Massachusetts.

Whether any money was received from the provincial government, under this article or not, does not appear from the papers or evidence submitted to me.

That this timber was lost to the proprietors during the suspension of the jurisdiction of the United States, and consequently of the State of Maine, over the territory in accordance with the diplomatic arrangement referred to, appears to be clearly shown; but whether the government is legally or equitably bound to remunerate its citizens for property lost under such circumstances is respectfully submitted. That the State of Maine withheld the exercise of her authority over the territory as a matter of courtesy to the general government, and not in submission to recognized authority, is apparent from the fact that she resumed the exercise of her jurisdiction in 1839, without the consent of the United States. But if such courtesy was exercised in deference to the known wishes of the general government, and the citizen was deprived of his property in consequence, was not the property of the citizen the consideration, by fair construction, paid for the forbearance which the interests of the United States required, and therefore taken for public use?

VARIATION OF BOUNDARY LINE.

A further claim is presented for indemnity for a quantity of land which was lost to the proprietors by the adoption in the treaty of Washington of a conventional line from the monument at the head of the St. Croix, bearing westward from the direct north line required by the treaty of 1783.

By the treaty of 1783 the boundary of the two countries was to be a line drawn from the source of the St. Croix “directly north” to the highlands. By the treaty of 1814 it was provided that commissioners should be appointed to ascertain and determine the points mentioned, &c.

The point to be regarded as the "head of the St. Croix" was fixed upon by the two governments in 1794, and a monument was erected to mark the spot. The "direct north" line from that point was never surveyed and marked by the two governments, although some attempts were made for that object. In 1804, surveyors, under the direction and authority of the State of Massachusetts, run and marked a north line—up to which the State made sundry grants of land—which line corresponds very nearly with that run in 1840 by Major Graham, of the United States topographical engineers, and which is, without doubt, the true line of the treaty of 1783. The line adopted by the treaty of Washington of 1842 did not pretend to be the old treaty line, but a conventional line run and marked by an exploring party sent out by the joint commission appointed under the treaty of Ghent, but never claimed by either party as being the recognized treaty line.

The proposition to adopt this new line was made by Lord Ashburton to Mr. Webster, in his letter, dated June 21, 1842, in which he proposes, "without at all doubting the accuracy" of Major Graham's line, to adopt the "exploring line," as being better established and recognized. And to this proposition of the British minister Mr. Webster assented, notwithstanding the Maine commissioners remonstrated against it, in a letter addressed to Mr. Webster, dated July 16, 1842, in which they inform him that the proposed line would "cut off a portion of the grants made long before by Massachusetts; that it was well known not to be the true line; and that it would take from Maine a strip of territory nearly a mile wide where it crosses the St. John's, and diminishing in width until it came to a point at the monument. The quantity of land lost to individual proprietors by this change in the line is represented to be about ten thousand acres, for which indemnity is asked.

Diagrams of the towns, portions of which were thus cut off, with affidavits of surveyors of the number of acres lost, with some other testimony in relation thereto, has been exhibited, and are submitted with the papers in these cases.

All of which is respectfully submitted.

N. C. TOWLE,
Agent, &c.

It appears from the foregoing statement and from the evidence in the case, that the title to 8,434 acres of land in the Eaton grant and Plymouth township, was transferred from the private proprietors of the same to the settlers in possession, by the operation of the 4th article of the treaty of 1842. Private property having thus been taken for public considerations, the government is bound to make compensation. The value of the land the committee of the last session fixed, as the result of the testimony, at \$4 per acre, including the timber and exclusive of improvement. The present committee regard that as a reasonable price, amounting to \$33,736; and for the payment of that sum provision is made in first and second sections of the accompanying bill.

It further appears that valuable pine timber was taken from the

lands of the claimants between the years 1833 and 1839, while the owners were disabled from protecting their property, in consequence of an arrangement entered into between the United States and Great Britain. From public considerations connected with the peace of the country, their property was placed out of that protection of the laws which is the common right of all citizens, and their claim to be indemnified for resulting losses would seem to be well founded. The amount claimed under this head is \$23,646, being at the rate of one dollar per acre. The proof in the case would indicate the justice of allowing a larger sum, but as the commissioner of Maine has expressed his willingness to acquiesce in that sum, the committee have adopted it, and provide for its payment in the third section of the bill.

The testimony as to the extent and value of the lands belonging to individuals transferred to New Brunswick by the adoption of the conventional line is too indefinite to authorize the committee to propose measure of relief.

In conclusion, this committee, upon a careful re-examination of the case, concur in the opinion to which the committee of the last Congress arrived, and report the accompanying bill.

DANIEL CLARK.

APPENDIX.

MEMORIAL OF GEORGE M. WESTON.

To the Senate and House of Representatives of the United States of America:

This memorial of George M. Weston, commissioner from Maine, to present the claims of that State under the fourth article of the treaty of Washington, respectfully represents:

The fourth article of the treaty of Washington, concluded between the United States and Great Britain on the 9th of August, 1842, was in the following words:

“All grants of land heretofore made by either party, within the limits of the territory which by this treaty falls within the dominions of the other party, shall be held valid, ratified and confirmed to the persons in possession under such grants, to the same extent as if such territory had by this treaty fallen within the dominions of the party by whom such grants were made; and all equitable possessory claims arising from a possession and improvement of any lot or parcel of land by the person actually in possession, or by those under whom such person claims, for more than six years before the date of this treaty, shall, in like manner, be deemed valid, and be confirmed and quieted by a release, to the person entitled thereto, of the title to such lot or parcel of land, so described as best to include the improvements made thereon; and in all other respects the two contracting parties agree to deal upon the most liberal principles of equity with the settlers

actually dwelling upon the territory falling to them, respectively, which has heretofore been in dispute between them."

The territory which had been involved in the dispute between the United States and Great Britain, which was adjusted by the treaty of Washington, embraced nine millions of acres, or about one-third of the area of Maine. It was inaccessible by roads, and had been substantially taken out of the jurisdiction of Maine by the arrangement entered into in 1832 between the British minister at Washington and the Secretary of State for the United States. Its condition in respect to occupation and settlements was imperfectly understood. Attention appears to have been principally attracted to the French settlement on the river St. John, commonly known as the Madawaska settlement, which embraced a large number of people, and was ancient and well known. In 1843, the government of Maine, in conjunction with the government of Massachusetts, instituted a commission to ascertain and define the limits of lots, in the enjoyment of which settlers and holders of grants were entitled to be quieted by the provisions of the fourth article of the treaty of Washington. This commission was soon terminated, and its labors seem to have been mainly confined to the Madawaska settlement, above referred to.

On the report of this commission deeds of conveyance were executed to the parties entitled by the land agents of Maine and Massachusetts. It did not then seem to be understood that the treaty operated, *proprio vigore*, to give title to the holders of grants and settlers coming within the provisions of the fourth article. On the contrary, that article appears to have been treated merely as a contract and agreement, to be subsequently executed and carried out by the parties bound by it.

It appears, also, from the report of this commission, to have been the impression of the gentlemen who composed it that their duties were confined to quieting the holders of British grants and settlers upon the public domain of Maine and Massachusetts, and they instituted no inquiries into the rights of such grantees and settlers upon lands belonging to individual proprietors.

Although the treaty, if in truth any action was necessary to carry it out, was obligatory, not upon Maine or Massachusetts, but upon the United States, the government of the United States has not seen fit, or found it necessary, to take any measures in the premises. In the analogous cases of Florida and Louisiana, where, under the treaties by which those Territories were acquired from foreign powers, certain prior rights in lands were secured to individuals, Congress has thought proper to make these rights more available, by instituting commissions, or by conferring special power upon existing tribunals. In reference to the treaty of Washington, it seems to have been left to Maine as the local sovereign, and to Maine and Massachusetts as the proprietors of the great bulk of the lands affected by it, to adopt such measures as were required by the national faith, and by the repose and quiet of the country. All which the government of the United States has ever done has been to sanction and ratify the agency thus naturally and properly assumed by Maine and Massachusetts.

The expenses of the commission instituted by those States in 1843

were audited and paid by the treasury of the United States, the proper officers adopting the views hereinbefore given.

It very soon became manifest that the attention of that commission had not been called to numerous cases falling within the scope of its duties and powers, even upon the narrowest construction of them. This will not appear surprising when the great extent of the territory concerned—larger, indeed, than the whole State of Massachusetts—the entire absence of roads, the want of knowledge of their rights on the part of the settlers, and the shortness of the period during which the commission was in existence, are taken into account.

In the case of *Little vs. Watson*, adjudicated by the supreme court of Maine, and in which the decision was published in 1852, it was held—

First. That the treaty of Washington operated to give title by its own force to the holders of British grants coming within the fourth article; and

Secondly. That it gave title as well against private proprietors as against Maine and Massachusetts. The elaborate opinion of Chief Justice Shepley, announcing these results, will be found in the 32d volume of the Maine Reports, page 214. It is based, so far as authority is concerned, upon the similar case of *United States vs. Pencherman*, arising in Florida, and in which the decision of the Supreme Court of the United States, as pronounced by Chief Justice Marshall, may be found in Peters vii, 51.

Chief Justice Shepley says:

“The treaty of Washington, which provides that grants of land ‘shall be held valid, ratified, and confirmed,’ does not contemplate any future act as necessary to the validity, ratification, or confirmation of the grant. They are held to be so by those whose duty it may be to act upon them. The language addresses even more appropriately the judicial than the legislative department. It is the duty of the court to consider that treaty to be a law operating upon the grant, made under the authority of the British government, and declaring that it shall be held valid, ratified, and confirmed.

“It is further insisted that it cannot be permitted so to operate, and thereby defeat the title of the demandant to the land, without a violation of that provision of the Constitution of the United States which declares that private property shall not be taken for public use, without just compensation. It is not in the argument denied that public or private property may be sacrificed by treaty; but it is said that such a provision of a treaty as would take private property, without compensation, must remain inoperative, or suspended, until compensation has been made.

“Such a construction would infringe upon the treaty-making power, and make its acts depend for their validity upon the will of the legislative department, while the Constitution provides that treaties shall be the supreme law.

“The clause of the Constitution referred to is a restriction imposed upon the legislative department, in its exercise of the right of eminent domain. It must, of necessity, have reference to that department which has the power to make compensation, and not to the treaty-

making power, which cannot do it. This provision of the Constitution will not prevent the operation of the treaty upon the grant of the tenant.—(*Ware vs. Hilton*, 3 *Dallus*, 236 ; *United States vs. Schooner Peggy*, 1 *Cranch*, 110. The demandant must seek compensation for the loss of his land from the justice of his country.”

The principal of the decision in *Little vs. Watson*, unquestionably applies to the case of possessory claims arising more than six years before the date of the treaty. Such claims are to be “*deemed*” valid, while grants are to be “*held*” valid ; the import of the two words being identically the same, and both of them addressing themselves, in the language of Chief Justice Shepley, rather to “*the judicial than the legislative department.*” It is true, that from the nature of the case, something is to be done in reference to possessory claims which is not required in reference to grants, viz: that an exact demarcation and description of limits is to be made. But when such description is made by competent authority, no matter when made, it has relation back to the date of the treaty ; at which time, by force of the treaty itself, if the decision in *Little vs. Watson* is correct, the possessory claim was converted into an indefeasible title against former owners, whether public or private. A release would be an instrument in which such a description might be appropriately embodied, and so would be a desirable and valuable evidence and muniment of title, but would not itself constitute the title, which would be perfect without it.

In a case arising between a proprietor and the holder of a possessory claim under the treaty, at a *nisi prius* term of the supreme court of Maine, holden during the last year in Aroostook county, the principle of the decision in *Little vs. Watson* was unhesitatingly applied.

If the treaty is merely a contract to be executed, it would be the duty of the government of the United States to obtain by purchase the title of private proprietors, where it is under obligation to secure a title to settlers and holders of British grants. But inasmuch as the treaty is enforced by the judicial tribunals as a perfected law, in the matters to which it relates, it seems to be the duty of the government of the United States to make prompt and sufficient indemnity to those whose rights of private property have been forced to yield to overruling considerations of public policy.

In view of the fact that the joint commission instituted by Maine and Massachusetts in 1843, had left unexamined numerous cases falling within the treaty, even under the narrow construction which appears to have been then given to it, and in view also of the more enlarged construction subsequently given to it by the judicial tribunals, the legislature of Maine, on the 12th of April, 1854, instituted a new commission, who reported on the 6th of March, 1855, and a printed copy of whose report accompanies this memorial.

It appears from this report, that upon lands belonging to private proprietors, claims by possession arising more than six years before the date of the treaty have been ascertained to the extent of about seven thousand acres ; and also claims, to a less extent, by possession not arising six years before the date of the treaty, and therefore addressing themselves merely to the discretion of the government of the United

States, under that clause of the fourth article which provides that “*in all other respects the two contracting parties agree to deal upon the most liberal principles of equity with the settlers actually dwelling upon the territory falling to them, respectively, which has heretofore been in dispute between them.*”

In one view of the case, the government of Maine might leave the individual proprietors, some of whom are not her own citizens, who have been deprived of their property by the treaty of Washington as authoritatively construed by the judicial tribunals, to seek for themselves that redress which they could not fail to receive from the justice of the federal government, from the constitutional exercise of whose power this treaty derives its force. But the government of Maine is itself concerned in the subject-matter, in the interest of the repose and quiet of the territory lately in dispute with Great Britain; and, in fact, in that interest it made the provisions of the fourth article the condition of the most reluctant assent which it gave to the treaty. In that interest the government of Maine has instructed the undersigned, while prosecuting here its own claims for pecuniary indemnity for lands conveyed and to be conveyed under the treaty to settlers and holders of British grants, to ask the adoption by Congress of some comprehensive measure which shall, with the least possible delay, quiet all questions between proprietors and occupants in a territory whose growth and development have been so long retarded by the controversy in respect to the northeastern boundary of the United States.

The undersigned is also instructed to ask that the same measure may embrace some provisions for the indemnification of private proprietors for losses of timber under the arrangement of 1832 between the United States and Great Britain, which suspended the jurisdiction of Maine over a portion of the disputed territory, and of those private proprietors whose lands were taken away by the adoption in the treaty of Washington, as a conventional line, of the exploring line run northerly from the monument at the source of the St. Croix, instead of the due north line from that point, as established by the treaty of peace of 1783 between the United States and Great Britain.

GEORGE M. WESTON.

WASHINGTON, February 6, 1856.

Letter of George M. Weston to the Hon. Committee on Claims of the U. S. Senate.

I ask the Committee on Claims to consider—

First. What was actually agreed between the governments of the United States and of Great Britain as to the jurisdiction of the “disputed territory” of Maine?

Second. What the authorities of New Brunswick claimed to have been agreed as above, and what jurisdiction they actually exercised?

Third. To what extent, and how long, Maine did, in fact, forbear the exertion of her jurisdiction in deference to the wishes of the United States?

Upon the first point, I remark, that the arrangement really entered into at Washington is found in a letter of July 21, 1832, from Mr. Livingston, Secretary of State of the United States, to the British minister at Washington, in which Mr. Livingston says:

"Until this matter shall be brought to a final conclusion, the necessity of refraining on both sides from any exercise of jurisdiction beyond the boundaries now actually possessed, must be apparent, and will, no doubt, be acquiesced in on the part of his Britannic Majesty's province, *as it will be by the United States.*"

The British minister, Sir Charles R. Vaughan, in his reply, says:

"He is further to assure Mr. Livingston that his Majesty's government entirely concurs with that of the United States in the principle of continuing to abstain, during the progress of the negotiation, from extending the exercise of jurisdiction, within the disputed territory, beyond the limits within which it has been hitherto usually exercised by the authorities of either party."

Upon the second point, I remark, that the authorities of New Brunswick so perverted the before recited agreement, or assumed such a state of facts as to the jurisdiction which had "*been hitherto usually exercised,*" as to claim the exclusive custody of the valleys of the St. John and Aroostook, and they did, in fact, keep out any interfering jurisdiction of Maine until the winter of 1838-'39.

These claims of New Brunswick are matters of historical notoriety. They led to the (so-called) Aroostook war of 1839.

In the winter of 1838 Maine directed her surveyor general to survey certain townships on the Aroostook river. This was the first movement towards taking jurisdiction in that quarter which Maine had made. The surveyor general, in discharging this duty, received from James McLaughlan, a British officer, claiming to be the "*warden of the disputed territory,*" a letter, of which the following is a copy:

"Whereas the operations in which you and your party are engaged in surveying land and locating settlers on this river, under the authority of the State of Maine, appears to me to be *a violation of the existing arrangements* subsisting between the British government and that of the United States; and whereas, by my instructions, it is made my duty to protest against any act implying sovereignty or jurisdiction on the part of any government or State, or of citizens or subjects of any government or State, exercised within the territory in dispute between the two governments of Great Britain and the United States, and known by the name of the 'disputed territory,' until the right to that territory shall have been determined by negotiation between the two governments:

"I do hereby, accordingly, in my capacity of warden of said territory, duly approved by the British government, in pursuance of my duty on behalf of her Majesty, protest and warn you forthwith to desist from proceeding further with your proceedings."

On the 13th of February, 1839, Sir John Harvey, governor of New Brunswick, in a letter to the governor of Maine, remonstrating against the sending by the latter of a force to expel trespassers from the Aroostook river, says:

"I have just heard, with the utmost surprise and regret, that, with-

out the courtesy of any previous intimation whatever to this government, an armed force from the State of Maine has entered the territory, the claim to which is in dispute betwixt Great Britain and the United States, *and which it has been agreed betwixt the two general governments shall remain in the exclusive possession and jurisdiction of England until that claim shall be determined.*"

"It has been my duty, on more than one occasion, to apprise the executive government of Maine that my instructions do not permit me to suffer any interference with that possession and jurisdiction, until the question of jurisdiction shall have been finally decided.

* * * * *

"I do not hesitate in entreating your excellency to relieve me, by ordering the immediate recall of a force whose presence within the precincts of the territory as claimed by England it is contrary to my instructions to permit; and it is proper that I should acquaint your excellency that I have directed a strong force of her Majesty's troops to be in readiness to support her Majesty's authority, and protect her Majesty's subjects in the disputed territory, in the event of this request not being immediately complied with."

It thus appears that New Brunswick claimed exclusive possession of the St. John and Aroostook rivers, and that when an attempt at adverse jurisdiction, although confined to the mere purpose of driving off trespassers, was made by Maine in the winter of 1838-'39, it was resisted by a threat of the military power of Great Britain.

Upon the third point, I remark, that it is a part of the public history of the country that Maine forbore actual jurisdiction on the Aroostook river until 1838. In the winter of that year her legislature directed certain surveys of lands to be made on that river, as before noticed; and during that year her land agent caused investigation to be made as to the extent of the trespassing going on in that quarter.

On the 20th of March, 1838, Col. Ebenezer Webster was appointed by the land agent of Maine to examine the condition of things on the St. John and Aroostook rivers. His report, dated May 7, 1838, is appended to the land agent's annual report of January 1, 1839.

On the 14th of December, 1838, the land agents of Maine and Massachusetts commissioned George W. Buckmore "to proceed to the Aroostook river and see that no trespassing is committed on the townships belonging to Maine and Massachusetts, on that river, the ensuing winter."

His report is dated January 22, 1839, and led to the passage of the resolve of January 24, "that the land agent be, and is hereby, authorized and required to employ sufficient force to arrest, detain, and imprison all persons found trespassing on the territory of this State, as bounded and established by the treaty of 1783."

It abundantly appears that these movements of Maine in that quarter were the first which were made there; and, in the second place, that Maine had forborne until then, in deference to the wishes of the United States.

In his message of January 2, 1839, to the legislature of Maine, Gov. Hunt, referring to the land agent's report of the measures which

had been taken to look up and warn off persons trespassing on the Aroostook river, says :

"It is encouraging and satisfactory that this *first attempt* to interfere directly with such unlawful acts, resulted in so great success."

In the same message Governor Hunt says :

"The assumption of a right to exclusive and absolute jurisdiction, by the government of New Brunswick, over the whole territory north of the sources of the Aroostook and St. John rivers, and the establishment of a wardenship over the same, *by the concurrence, as is asserted, of the President of the United States*, and the exercise of authority within the same limits, have been the subject of frequent objection and loud remonstrance on the part of the people of this State."

Hon. Charles S. Davies, of Portland, Maine, who had been appointed a commissioner to this government in reference to the matter of the northeastern boundary, in a report made to Governor Hunt, on the 1st of August, 1838, says :

"Nothing can be more remarkable, in fact, than the weakness of suffering so large a portion of the original domain of this State to pass under the unquestioned control of a mere provincial warden."

The resolves passed by the legislature of Maine, March 23, 1839, authorizing the governor, in a certain contingency, to withdraw the militia from the Aroostook river, although continuing to assert the jurisdiction as against trespassers, assumed by the resolve of the 24th of January of that year, contain the most complete evidence that Maine had heretofore been restrained, and would still consent to be further restrained, by a deference to the arrangements and wishes of the United States government. Those resolves were, in part, as follows :

"*Resolved*, That the right of this State to exclusive jurisdiction over all that territory claimed by Great Britain which lies west of a due north line from the monument to the northwest angle of Nova Scotia (usually denominated the '*disputed territory*') has been constant and indefeasible since our existence as an independent State ; and no agreement which has been, or may be, entered into by the government of the Union can impair her prerogative to be the sole judge of the time when, and the manner in which, that right shall be enforced.

"*Resolved*, That this State, in view of the measures recently adopted by the government of the Union in relation to this question, and particularly the provision made for a special minister to the court of St. James, and actuated by an earnest desire to come to an amicable adjustment of the whole controversy, will forbear to enforce her jurisdiction in that part of her territory, *the possession of which is now usurped by the province of New Brunswick*, so far as she can do so consistently with the maintenance of the resolve of the 24th of January last," &c., &c., &c.

These resolves had relation to the contingent withdrawal of the militia from the Aroostook river ; and they prove, 1st, that possession there had been usurped by New Brunswick ; 2d, that no measures, even to repel trespassers, had been taken by the legislature of Maine until January 24, 1839 ; and 3d, that this forbearance, which was

still to be continued to a certain extent, was in deference to the arrangements and wishes of the government of the United States.

The township granted to the town of Plymouth, and the half township granted to General Eaton for his valor and patriotic services in our war with the Barbary Powers, both on the Aroostook river and near to the line of New Brunswick, are, I believe, the only tracts of land belonging to private proprietors within the disputed territory, or rather within that part of it from which the jurisdiction of Maine was fully ousted.

The owners of those tracts, during the period of the suspended jurisdiction of Maine, could not enjoy their property, or even protect it; and they suffered great losses of valuable timber in consequence of this condition of things.

Redress for them is asked as a matter of justice, but it is not unsuitable to refer to other considerations.

The half township granted to General Eaton for patriotic services, passed in 1808 into the hands of two gentlemen, as security for a loan of money. On the part of one of those gentlemen, (Judge Stebbins,) this loan is known to have been a friendly act altogether, and there is some reason to believe that the same thing is true of the other gentleman. They are now represented each by an only child and a daughter. One of them, Miss Laura Stebbins, had no inheritance save this interest in the Eaton grant, from which she never realized a single dollar, and is now living in a condition of destitution.

The owners of the Plymouth township, during the period when it was put out of the protection of American laws, are citizens of Boston, advanced in years, who paid large sums for this property, and one of them was broken down and bankrupted by his losses in it.

GEORGE M. WESTON.

WASHINGTON, *April* 14, 1856.

